



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sierra Engineering
File: B-237820
Date: January 16, 1990

DIGEST

Rejection of small business' low offer and award of a contract to the second-low offeror was improper where the agency found low offeror nonresponsible, but improperly failed to refer nonresponsibility determination to the Small Business Administration for certificate of competency proceedings.

DECISION

Sierra Engineering protests the award of a contract to Skyline Industries, Inc., under request for proposals (RFP) No. F04606-89-R-52947, issued by the Department of the Air Force for glove activators applicable to the F-111 aircraft. Sierra contends that the Air Force improperly rejected its low offer as nonresponsive, rather than nonresponsible, and improperly failed to refer the nonresponsibility determination to the Small Business Administration (SBA) for certificate of competency (COC) proceedings.

We sustain the protest.

Two offers were received by the July 19, 1989, closing date under the RFP, and Sierra was the apparent low offeror. Based on a negative pre-award survey of Sierra's facility, however, the contracting officer rejected Sierra's offer as nonresponsive,^{1/} and awarded the contract to Skyline on October 11. The Air Force did not suspend performance of the contract since Sierra filed this protest in our Office more than 10 days after award of the contract to Skyline.


^{1/} Since the concept of responsiveness does not apply to negotiated procurements, we assume that by rejecting Sierra's offer as "nonresponsive," the Air Force meant that it was technically unacceptable.

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In its agency report in response to Sierra's protest, the Air Force acknowledges that the matters raised in the negative pre-award survey pertained to Sierra's responsibility rather than its technical acceptability. The Air Force concedes that because Sierra is a small business, the nonresponsibility determination should have been referred to the SBA for COC proceedings. The Air Force advises, however, that since Skyline has substantially completed performance of the contract, corrective action is impracticable at this time.

Under these circumstances, Sierra is entitled to recover its proposal preparation costs and the costs of filing and pursuing the protest, including attorneys' fees. See 4 C.F.R. § 21.6(d)(1), and (2) (1989); W.S. Spotswood & Sons, Inc., B-236713.2, Nov. 16, 1989, 89-2 CPD ¶ _____. Sierra should submit its claim for costs directly to the agency.

The protest is sustained.

for 
Comptroller General
of the United States